

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Hame, Markus, et al.
Serial Number: 10/569,169
Filed: 02/27/2006
Group Art Unit: 3651
Examiner: Singh, Kavel
Title: PASSENGER CONVEYOR DRIVE MONITORING
ARRANGEMENT WITH BRAKE ACTUATION

REQUEST FOR RECONSIDERATION

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This paper is responsive to the Non-Final Office Action mailed on November 14, 2008.

Applicant respectfully requests reconsideration of this application

**The rejection under 35 U.S.C. §103
must be withdrawn.**

The rejections under 35 U.S.C. §103 all are based upon a combination of the *Fargo* reference (U.S. Patent No. 7,137,500) with at least one other reference. The *Fargo* reference cannot be used in a proposed combination under 35 U.S.C. §103 against any of the claims in this application.

This application has a PCT priority filing date of October 29, 2003. Therefore, at best, the *Fargo* reference might be considered prior art under 35 U.S.C. §102(e), if one were to consider the PCT filing date of January 7, 2003 of the *Fargo* reference. This application and the *Fargo* reference are commonly owned. Otis Elevator Company is the assignee of both applications.

The *Fargo* reference cannot be used in a combination for purposes of attempting to establish a *prima facie* case of obviousness against any of the claims of this application because the subject matter of the *Fargo* reference and the claimed invention of this application were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. According to 35 U.S.C. §103(c)(1), the proposed combination cannot be made.

Therefore, the rejections under 35 U.S.C. §103 based upon the proposed combination of the *Fargo* reference with one or two other references cannot be made and the rejection must be withdrawn.

This case is in condition for allowance.

Respectfully submitted,

CARLSON, GASKEY & OLDS

By: 

David J. Gaskey, Reg. No. 37,139
400 W. Maple Rd., Ste. 350
Birmingham, MI 48009
(248) 988-8360

Dated: February 16, 2009